Date: 3rd weekend of July.

Location: The uncharted lagoon or basin in Milwaukee Harbor north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a ''comma'' shaped man-made rock wall on the east. The construction of the lagoon is such that a small ''basin'' has been created with one entrance located at the northwest end, thus, there is no ''thru traffic''.

Milwaukee Summerfest

Sponsor: Milwaukee World Festival, Inc.

Date: Last week of June through 2nd weekend of July.

Location: The uncharted lagoon or basin in Milkwaukee Harbor north of the mouth of the Milwaukee River and directly adjacent to the Summerfest grounds, enclosed by shore on the west and a ''comma'' shaped man-made rock wall on the east. The construction of the lagoon is such that a small ''basin'' has been created with one entrance located at the northwest end, thus, there is no ''thru traffic''. Four special buoys will be set by the sponsor to delineate the entrance to the lagoon.

Racine on the Lakefront Airshow

Sponsor: Rotary Club of Racine.

Date: 2nd weekend of June.

Location: That portion of Racine Harbor, Lake Michigan bounded by the following corner points:

Southeast Corner—42°41.95′N 87° 45.5′W
Southwest Corner—42°41.95′N 87° 47.2′W
Northwest Corner—42°45.6′N 87° 46.2′W
Northeast Corner—42°45.6′N 87° 45.5′W.
(NAD 83)

Dated: May 17, 1995.

Rudy K. Peschel,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 95–15223 Filed 6–20–95; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 133; NJ20–1–6709b; FRL–5218–4]

Approval and Promulgation of Implementation Plans; Gasoline Volatility Regulation State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of New Jersey which incorporates into the New Jersey SIP revisions to Subchapter 25, ''Control and Prohibition of Air Pollution by Vehicular Fuel.'' These revisions include a modification to the State's volatility standard for vehicular fuels and the addition of a procedure by which persons may apply for an exemption from the Reid Vapor Pressure (RVP) standard that allows the use of gasoline which does not comply with that standard. This action is necessary to keep the State's SIP consistent with changes to its existing regulations. In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the action is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before July 21, 1995.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Air and Waste Management Division, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the State submittal are available at the following locations for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Library, 26 Federal Plaza, room 402, New York, New York 10278.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Environmental Engineer, Technical Evaluation Section, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

Background

For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: May 2, 1995.

William J. Muszynski,

Deputy Regional Administrator.

[FR Doc. 95–15035 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[FL01; FRL–5225–2]

Clean Air Act Proposed Interim Approval of Operating Permit Program; Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed interim approval.

SUMMARY: EPA proposes interim approval of the operating permit program submitted by the State of Florida for the purpose of complying with Federal requirements which mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources, and to certain other sources.

DATES: Comments on this proposed action must be received in writing by July 21, 1995.

ADDRESSES: Written comments on this action should be addressed to Carla E. Pierce, Chief, Air Toxics Unit/Title V Program Development Team, Air Programs Branch, at the EPA Region 4 office listed below. Copies of Florida's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365.

FOR FURTHER INFORMATION CONTACT: Kim Gates, Title V Program Development Team, Air Programs Branch, Air Pesticides & Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 345 Courtland Street, NE, Atlanta, GA 30365, (404) 347–3555, Ext. 4146.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the Clean Air Act (''the Act'') as amended by the 1990 Clean Air Act Amendments, EPA promulgated rules on July 21, 1992 (57 FR 32250), that define the minimum elements of an approvable state operating permit program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permit programs. These rules

are codified at 40 Code of Federal Regulations (CFR) part 70. Title V and part 70 require that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires states to develop and submit these programs to EPA by November 15, 1993, and EPA to approve or disapprove each program within one year after receiving the submittal. If the State's submission is materially changed during the one-year review period, 40 CFR 70.4(e)(2) allows EPA to extend the review period for no more than one year following receipt of the additional materials. EPA received Florida's title V operating permit program submittal on November 16, 1993. The State provided EPA with additional materials in supplemental submittals dated July 8, 1994, November 28, 1994, December 21, 1994, December 22, 1994, and January 11, 1995. Because these supplements materially changed the State's title V program submittal, EPA has extended the one-year review period.

EPA reviews state operating permit programs pursuant to section 502 of the Act and 40 CFR part 70, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by November 15, 1995, or by the end of an interim program, it must establish and implement a Federal operating permit program for that state.

B. Federal Oversight and Sanctions

If EPA grants interim approval to Florida's program, the interim approval would extend for two years following the effective date of final interim approval, and could not be renewed. During the interim approval period, the State of Florida would not be subject to sanctions, and EPA would not be obligated to promulgate, administer, and enforce a Federal operating permit program for the State. Permits issued under a program with interim approval are fully effective with respect to part 70. The 12-month time period for submittal of permit applications by sources subject to part 70 requirements and the three-year time period for processing the initial permit applications begin upon the effective date of final interim approval.

Following the granting of final interim approval, if Florida fails to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA will start an 18-month clock for mandatory sanctions. If Florida then fails to submit a corrective program that EPA finds complete before the expiration of that 18-month period, EPA is required to apply one of the sanctions in section 179(b) of the Act, which will remain in effect until EPA determines that Florida has corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of Florida, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Florida has come into compliance. In any case, if, six months after application of the first sanction, Florida still has not submitted a corrective program that EPA determines to be complete, a second sanction will be required.

If, following final interim approval, EPA disapproves Florida's complete corrective program, EPA will be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date Florida has submitted a revised program and EPA has determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator finds a lack of good faith on the part of Florida, both sanctions under section 179(b) will apply after the expiration of the 18-month period until the Administrator determines that Florida has come into compliance. In all cases, if six months after EPA applies the first sanction, Florida has not submitted a revised program that EPA determines to have corrected the deficiencies that prompted disapproval, a second sanction will be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer, and enforce a Federal operating permit program for that state upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

EPA has concluded that the operating permit program submitted by Florida substantially meets the requirements of title V and part 70, and proposes to grant interim approval to the program. For detailed information on the analysis of the State's submission, please refer to the Technical Support Document (TSD) contained in the docket at the address noted above.

1. Support Materials

Pursuant to section 502(d) of the Act, each state must develop and submit to the Administrator an operating permit program under state or local law or under an interstate compact meeting the requirements of title V of the Act. On November 16, 1993, EPA received the title V operating permit program submitted by the State of Florida. The Florida Department of Environmental Protection (FDEP) requested, under the signature of the Florida Governor's designee, approval of its operating permit program with full authority to administer the program in all areas of the State of Florida, with the exceptions of Indian reservations and tribal lands. The State supplemented the program submittal on July 8, 1994, November 28, 1994, and December 22, 1994.

The Florida submittal addresses, in Section II entitled ''Complete Program Description,'' the requirement of 40 CFR 70.4(b)(1) by describing how the State intends to carry out its responsibilities under the part 70 regulations. EPA has deemed the program description to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Pursuant to 40 CFR 70.4(b)(3), each state is required to submit a legal opinion from the Attorney General (or the attorney for the state air pollution control agency that has independent legal counsel) demonstrating adequate authority to carry out all aspects of the title V operating permit program. The State of Florida submitted a General Counsel Opinion and a Supplementary General Counsel Opinion demonstrating adequate legal authority as required by Federal law and regulation.

Section 70.4(b)(4) requires the submission of relevant permitting program documentation not contained in the regulations, such as permit application forms, permit forms, and relevant guidance to assist in the State's implementation of its permit program. Appendix I of Florida's submittal includes the permit application form, and EPA has determined that the application form meets the requirements of 40 CFR 70.5(c).

2. Regulations and Program Implementation

The State of Florida developed Chapter 62–213 of the Florida Administrative Code (F.A.C.) for the implementation of the substantive requirements of 40 CFR part 70. The State also made changes to Chapters 62–

103 and 62–210, F.A.C. to implement other part 70 requirements. These rules, and several other rules and statutes providing for State permitting and administrative actions, were submitted by Florida with sufficient evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

The Florida program, in Rules 62–213.100 and 62–213.200, F.A.C., substantially meets the requirements of 40 CFR 70.2 and 70.3 with regards to applicability. However, the portion of the State's definition of ''major source'' in Rule 62–213.200(19)(a), F.A.C., implies that emissions of criteria pollutants from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station will not be aggregated with emissions of criteria pollutants from other similar units. Since the State's definition of ''major source'' conflicts with the part 70 definition, Florida has initiated rulemaking to clarify that the non-aggregation in the described situations applies only to hazardous air pollutants (HAPs). Finalization of this rulemaking is a condition of full program approval.

Florida's program, in Rules 62–210.900 and 62–213.420, F.A.C., substantially meets the requirements of 40 CFR 70.5 for complete permit application forms. However, the State's program, in Rule 62–4.090, F.A.C., requires renewal applications to be submitted 60 days prior to expiration of existing operating permits. This requirement conflicts with the requirement of 40 CFR 70.5(a)(1)(iii) because the State's timeframe does not ensure that a permit will not expire prior to renewal. Florida has initiated rulemaking to require submittal of renewal applications six months prior to expiration of existing operating permits. Finalization of this rulemaking is a condition of full program approval.

Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purposes of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA may approve as part of that state's program any activities or emission levels that the state wishes to consider insignificant. Part 70, however, does not establish emissions thresholds for insignificant activities. EPA has accepted emissions thresholds of five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs, as reasonable.

Florida's title V program includes three different approaches to establishing insignificant activities and emissions levels. Rule 62–213.420(3)(c), F.A.C., establishes threshold levels for reporting emissions of pollutants for which no standard applies. Rule 62–210.300(3), F.A.C., provides for the exemption of certain facilities, emissions units, or pollutant-emitting activities from the title V permitting process. Rule 62–4.040(1)(b), F.A.C., allows the State to determine insignificant activities on a case-by-case basis during the permitting process.

The threshold levels in Rule 62–213.420(3)(c), F.A.C., do not exempt any units or activities from permitting requirements or any other requirements, except the reporting of emissions below the thresholds established. Rule 62–213.420(3)(c)2., F.A.C., provides for the reporting of emissions if the title V source emits or has the potential to emit at the following aggregate thresholds: 50 tons/year for carbon monoxide; 500 lbs/year for lead and lead compounds (expressed as lead); and five tons/year for particulates (PM–10), sulfur dioxide, nitrogen oxides, and volatile organic compounds (VOCs). Once these aggregate thresholds have been met, emissions are reported on a per unit basis for units which have a potential to emit at the following thresholds: 10 tons/year for carbon monoxide; 100 lbs/year for lead and lead compounds (expressed as lead); and one ton/year for particulates (PM–10), sulfur dioxide, nitrogen oxides, and VOCs. Fugitive emissions and emissions from units with the potential to emit less than the unit thresholds mentioned above shall be considered as source-wide emissions and shall be reported as source-wide emissions if, in the aggregate, the source-wide emissions equal or exceed the following thresholds: 10 tons/year for carbon monoxide; 100 lbs/year for lead and lead compounds (expressed as lead); and one ton/year of particulates (PM–10), sulfur dioxide, nitrogen oxides, and VOCs.

Rule 62–213.420(3)(c)3.b., F.A.C., provides for the reporting of HAPs when a title V source emits or has the potential to emit eight tons or more per year of any single HAP, or 20 tons or more per year of any combination of HAPs. Once these thresholds have been met, emissions are identified and reported from each emissions unit with the potential to emit one ton per year of any individual HAP. All fugitive emissions not associated with any specific emissions units are also reportable when such emissions exceed one ton per year of any individual HAP.

In the State's Supplement 1 (dated July 8, 1994) to the original title V program submittal, Florida noted that the emissions thresholds in its program were based on the presumption that reporting requirements need to be stringent enough to identify applicable requirements and to suffice for inventorying emissions to evaluate the impact on ambient air concentrations. The aggregate threshold for carbon monoxide of 50 tons/year appears to be inconsistent with this objective. Since the aggregate threshold of 50 tons/year must be met prior to the reporting of carbon monoxide in the application, the potential exists for carbon monoxide to be inappropriately excluded because of miscalculations. EPA proposes that, as a condition of full approval, the State provide EPA with an acceptable justification for establishing an aggregate carbon monoxide emissions threshold of 50 tons/year rather than five tons/year. Otherwise, the State must establish aggregate and individual unit thresholds that trigger the reporting of carbon monoxide emissions consistent with the emissions levels established for particulates (PM–10), sulfur dioxide, nitrogen oxides, and volatile organic compounds.

Moreover, since insignificant emissions levels are reviewed relative to threshold levels for determining major source status, as well as levels at which applicable requirements are triggered, Florida's thresholds for the reporting of HAP emissions must be revised as a condition of full program approval. For other state and local programs, EPA has accepted HAPs emission thresholds of the lesser of 1000 lbs/year or section 112(g) de minimis levels as sufficient for full approval.

Rule 62–210.300(3), F.A.C., exempts specific facilities, emissions units, or pollutant-emitting activities from the title V permitting process. As a condition of full approval, the State must revise Rule 62–210.300(3), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6), F.A.C.) will be exempted from title V permitting requirements; (2) insignificant activities or emissions units exemptions will not be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual

activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs.

In addition, several of the specific exemptions in Rule 62–210.300(3), F.A.C. must either be removed from the rule or revised as a condition of full approval. Specifically, Rule 62–210.300(3)(a), F.A.C. exempts ''[s]team and hot water generating units located within a single facility and having a total heat input, individually or collectively, equaling 50 million BTU/hr or less, and fired exclusively by natural gas except for periods of natural gas curtailment during which fuel oil containing no more than one percent sulfur is fired * * *'' However, during the periods fuel oil is fired, these sources could potentially emit sulfur dioxide in excess of major source thresholds. Since the potential emissions from these sources would not be ''insignificant,'' this exemption must be removed from Rule 62–210.300(3), F.A.C. as a condition of full approval.

Rule 62–210.300(3)(r), F.A.C. exempts ''[p]erchloroethylene dry cleaning facilities with a solvent consumption of less than 1,475 gallons per year.'' However, at the annual consumption rate of 1,475 gallons of perchloroethylene, these facilities could potentially emit over eight tons per year of perchloroethylene. Since the potential HAPs emissions from these sources is not ''insignificant,'' this exemption must be removed from Rule 62–210.300(3), F.A.C. as a condition of full approval.

Rule 62–210.300(3)(u), F.A.C. exempts ''[e]mergency electrical generators, heating units, and general purpose diesel engines operating no more than 400 hours per year * * *'' These sources could potentially have emissions in excess of major source thresholds, depending on the fuel used and the unit's size. Since the potential emissions from these sources would not be ''insignificant,'' this exemption must be removed from Rule 62–210.300(3), F.A.C. as a condition of full approval.

Rule 62–210.300(3)(x), F.A.C. exempts ''[p]hosphogypsum disposal areas and cooling ponds.'' This exemption potentially includes phosphogypsum stacks, which emit radon and are subject to the radionuclide National Emissions Standards for Hazardous Air Pollutants (NESHAPS) found in 40 CFR 61, Subpart R. Therefore, as a condition of full approval, this exemption must be revised to exclude phosphogypsum stacks.

Rule 62–4.040(1)(b), F.A.C., allows Florida to determine insignificant activities on a case-by-case basis during the permitting process. As a condition of full approval, the State must revise Rule 62–4.040(1)(b), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6), F.A.C.) will be exempted from title V permitting requirements; (2) no insignificant activities or emissions units exemptions will be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs.

Florida's program, in Rules 62–4.130, 62–4.160, 62–210.700, 62–213.410, and 62–213.440, F.A.C., substantially meets the requirements of 40 CFR 70.4, 70.5, and 70.6 for permit content (including operational flexibility). The State's program does not provide for off-permit changes as described in 40 CFR 70.4(b)(14).

Part 70 requires prompt reporting of deviations from the permit requirements. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirements. Although the permit program regulations should define ''prompt'' for purposes of administrative efficiency and clarity, an acceptable alternative is to define ''prompt'' in each individual permit. EPA believes that ''prompt'' should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

Florida has not defined ''prompt'' in its program with respect to the reporting of deviations. Rule 62–213.440(1)(b)3.b., F.A.C., requires reporting, in accordance with the requirements of Rules 62–210.700(6) and 62–4.130, F.A.C., of deviations from permit requirements. Rule 62–210.700(6), F.A.C., requires notification in accordance with Rule 62–4.130, F.A.C. Rule 62–4.130, F.A.C., requires immediate notification ''if the permittee is temporarily unable to comply with any of the conditions of the permit due to breakdown of equipment or destruction by hazard of fire, wind or by other cause.'' This requirement is reiterated in Rule 62–4.160(8), F.A.C., which is a general condition of each permit that extends the requirement to include immediate reporting if, for any reason, the permittee does not comply with or will be unable to comply with any condition or limitation specified in the permit. Florida has stated that ''immediately'' is not reasonably interpreted to mean a time beyond the next workday.

Florida has the authority to issue variances from requirements imposed by State law. Rule 62–103.100, F.A.C., allows Florida discretion to grant relief from compliance with State statutes and rules. EPA regards this provision as wholly external to the program submitted for approval under part 70, and consequently proposes to take no action on this provision of State law. EPA has no authority to approve provisions of state law, such as the variance provision referred to, that are inconsistent with title V. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally enforceable part 70 permit, except where such relief is granted through the procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

Florida's program, in Rules 62–210.360, 62–213.400, 62–213.412, 62–213.420, and 62–213.430, F.A.C., substantially meets the permit processing requirements of 40 CFR 70.7 (including minor permit modifications) and 70.8. However, the State's regulations do not provide for permit reopenings for cause consistent with 40 CFR 70.7(f)(1)(i), (iii), and (iv). As a condition of full approval, the State's program must provide the following: (1)

if a permit is reopened and revised because additional applicable requirements become applicable to a major source with a remaining permit term of 3 or more years, such a reopening shall be completed within 18 months after promulgation of the applicable requirement; (2) a permit shall be reopened and revised if EPA or the State determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit; and (3) a permit shall be reopened if EPA or the State determine that the permit must be revised or revoked to assure compliance with the applicable requirements.

The public participation requirements of 40 CFR 70.7(h) were addressed in Rules 62–103.150, 62–210.350, 62–213.430, and 62–213.450, F.A.C. The program also, in Sections 403.131, 403.141, and 403.161 of the Florida Statutes (F.S.), substantially meets the requirements of 40 CFR 70.11 with respect to enforcement authority.

The aforementioned TSD contains the detailed analysis of Florida's program and describes the manner in which the State's program meets all of the operating permit program requirements of 40 CFR part 70.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $25 per ton is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The State of Florida has elected to assess a title V operating permit fee below the Federal presumptive minimum fee amount. The State's program submittal, therefore, included a detailed fee demonstration in accordance with 40 CFR 70.9(b)(5). The fee demonstration showed that the fees collected will adequately cover the anticipated costs of the operating permit program for the years 1995 through 1999.

In Rule 62–213.205, F.A.C., the State established a 1995 license fee for title V sources of $25 per ton of each regulated air pollutant allowed to be emitted annually. Rule 62–213.205(1)(a), F.A.C., provides that the license fee may be increased beyond $25 per ton in years succeeding 1995 if the Secretary of FDEP finds that a shortage of revenue will occur in the absence of a fee adjustment. The State asserts that since one of the program's mandates is that it be self-supporting, it is expected that the Secretary's discretionary power will be exercised as the need arises to adjust the fee accordingly.

The program activities that will constitute the State's title V operating permit program are consistent with the activities described in 40 CFR 70.9(b)(1). Rule 62–213.205(3), F.A.C., provides that an audit of the State's operating permit program will be conducted 2 years after EPA has given full approval of the program or by December 31, 1996, whichever comes later, to ascertain whether the annual fees collected are used solely to support reasonable direct and indirect costs of the title V program. After the first audit, the program will be audited biennially. And though Rule 62–213.205(1)(a), F.A.C., provides that the annual fee may not exceed $35 per ton without legislative approval, Florida has assured EPA that it will seek legislative action to raise the fee amount above the $35 per ton limit if it becomes necessary.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. *Authority for section 112 implementation.* In its program submittal, Florida demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the Florida Statutes (i.e., Section 403.0872), and in the Florida Administrative Code in regulatory provisions defining ''applicable requirements'' and stating that permits must address all applicable requirements. Moreover, Florida has initiated rulemaking to clearly state that each permit shall incorporate all applicable requirements for the title V source. EPA has determined that this legal authority is sufficient to allow the State to issue permits that assure compliance with all section 112 requirements.

EPA is interpreting the above legal authority to mean that Florida is able to carry out all section 112 activities with respect to part 70 and non-part 70 sources. For further rationale on this interpretation, please refer to the TSD.

b. *Implementation of section 112(g) upon program approval.* EPA issued an interpretive notice on February 14, 1995 (60 FR 8333), which outlines EPA's revised interpretation of section 112(g) applicability. The notice postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The notice sets forth in detail the rationale for the revised interpretation.

The section 112(g) interpretative notice explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow states time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Florida must have a Federally enforceable mechanism for implementing section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing State regulations.

EPA is aware that Florida lacks a program designed specifically to implement section 112(g). However, Florida does have a preconstruction review program that can serve as an adequate implementation vehicle during the transition period because it would allow the State to select control measures that would meet the maximum achievable control technology (MACT), as defined in section 112, and incorporate these measures into a Federally enforceable preconstruction permit.

For this reason, EPA proposes to approve the use of Florida's preconstruction review program found in Rule 62–212, F.A.C., under the authority of title V and part 70, solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between section 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations. Although section 112(l) generally provides authority for approval of state air programs to implement section 112(g), title V and section 112(g) provide for this limited approval because of the direct linkage between the implementation of section 112(g) and title V. The scope of this approval is narrowly limited to section 112(g) and does not confer or imply approval for purpose of any other provision under the Act (e.g., section 110). This approval will be without effect if EPA decides in the final section 112(g) rule that sources are not subject to the requirements of the rule until State regulations are adopted. The duration of this approval is limited to 18 months following promulgation by EPA of the section 112(g) rule to provide

adequate time for the State to adopt regulations consistent with the Federal requirements.

c. *Program for delegation of section 112 standards as promulgated.* The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a state program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Florida's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for part 70 sources and non-part 70 sources.[1]

Florida has informed EPA that it intends to accept the delegation of future section 112 standards using the mechanisms of adoption-by-reference and case-by-case delegation. The details of the State's use of these delegation mechanisms are set forth in a letter dated January 11, 1995, submitted by the State as a title V program addendum.

d. *Commitment to implement title IV of the Act.* Florida has committed to take action, following promulgation by EPA of regulations implementing sections 407 and 410 of the Act, or revisions to either part 72 or the regulations implementing sections 407 or 410, to either incorporate the revised provisions by reference or submit, for EPA approval, State regulations implementing these provisions. On January 3, 1995, Florida's acid rain rule for the permitting of Phase II sources became state-effective. On March 10, 1995, the State submitted proposed changes to its acid rain rule to address discrepancies between the State's rule and the Federal requirements in part 72. The State is expediting rule revisions to ensure that an acid rain rule that is acceptable to EPA will be state-effective before November 15, 1995.

B. Proposed Actions

EPA proposes interim approval of the operating permit program submitted by the State of Florida on November 16, 1993, and as supplemented on July 8, 1994, November 28, 1994, and December 22, 1994. If promulgated, the State must make the changes discussed below to receive full program approval.

1. Definition of ''Major Source''

As a condition of full approval, Florida is revising the definition of ''major source'' in Rule 62–213.200(19)(a), F.A.C. for consistency with the Federal definition. This rulemaking, when state-effective, will clarify that the non-aggregation in the situations described previously in section II.A.2. applies only to HAPs.

2. Timely Application for Permit Renewal

As a condition of full approval, Florida is revising Rule 62–4.090, F.A.C., to require submittal of permit renewal applications six months prior to expiration of existing title V permits. This rulemaking, when state-effective, will address the Federal requirement in 40 CFR 70.5(a)(1)(iii) for timely application for purposes of permit renewal.

3. Insignificant Activities Provisions

As a condition of full program approval, Florida must complete the following:

(a) Provide EPA with an acceptable justification for establishing an aggregate carbon monoxide emissions threshold of 50 tons/year rather than five tons/year. Otherwise, the State must establish aggregate and individual unit thresholds that trigger the reporting of carbon monoxide emissions consistent with the emissions levels established for particulates (PM–10), sulfur dioxide, nitrogen oxides, and volatile organic compounds. The State must also reduce the thresholds for HAP emissions to the lesser of 1000 lbs/year or section 112(g) de minimis levels.

(b) Revise Rule 62–210.300(3), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6)) will be exempted from title V permitting requirements; (2) insignificant activities or emissions units exemptions will not be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs. In addition, as discussed previously in section II.A.2., several exemptions in Rule 62–210.300(3), F.A.C. must either be removed from the rule or revised.

(c) Revise Rule 62–4.040(1)(b), F.A.C. to provide that (1) no insignificant activities or emissions units subject to applicable requirements (as defined in Rule 62–213.200(6), F.A.C.) will be exempted from title V permitting requirements; (2) no insignificant activities or emissions units exemptions will be used to lower the potential to emit below major source thresholds; and (3) emissions thresholds for individual activities or units that are exempted will not exceed five tons per year for criteria pollutants, and the lesser of 1000 pounds per year or section 112(g) de minimis levels for HAPs.

4. Permit Reopenings Provisions

As a condition of full approval, Florida must provide for permit reopenings for cause consistent with 40 CFR 70.7(f)(1)(i), (iii), and (iv).

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, Florida is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a Federal operating permit program in the State. Permits issued under a program with interim approval are fully effective with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of Florida's part 70 program that EPA proposes to interimly approve in this notice would apply to all part 70 sources (as defined in the approved program) within the State, except any sources of air pollution over which an Indian Tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian Tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

As discussed previously in section II.A.4.b., EPA proposes to approve

[1] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

Florida's preconstruction review program found in Rule 62–212, F.A.C., under the authority of title V and part 70 solely for the purpose of implementing section 112(g) to the extent necessary during the transition period between 112(g) promulgation and adoption of a State rule implementing EPA's section 112(g) regulations.

In addition, as discussed in section II.A.4.c., EPA proposes to grant approval under section 112(l)(5) and 40 CFR 63.91 to Florida's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. EPA also proposes to delegate existing standards under 40 CFR parts 61 and 63 for both part 70 sources and non-part 70 sources.

III. Administrative Requirements

A. Request for Public Comments

EPA requests comments on all aspects of this proposed interim approval. Copies of the State's submittal and other information relied upon for the proposed interim approval are contained in docket number FL–95–01 maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process; and

(2) To serve as the record in case of judicial review. EPA will consider any comments received by July 21, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permit programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act of 1995

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed interim approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 95–15174 Filed 6–20–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–125, RM–8534; RM–8575]

Radio Broadcasting Services; Fredericksburg, Helotes, Castroville, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition filed by October Communications Group, Inc., requesting the reallotment of Channel 266C from Fredericksburg, TX, to either Helotes or Castroville, TX, as their first local aural transmission service, and the modification of Station KONO-FM's license accordingly.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 94–125, adopted June 8, 1995, and released June 16, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

John A Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 95–15145 Filed 6–20–95; 8:45 am]

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